

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DAVID M. KIRK,

Plaintiff,

-against-

**CITIGROUP GLOBAL MARKETS HOLDINGS
INC.,**

Defendant.
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20-CV-7619 (ALC)

ORDER

ANDREW L. CARTER, JR., District Judge:

The Court is in receipt of the parties' email submissions on May 3 and May 4, 2021. The Court construes Defendant's submission as a motion to seal, which is hereby GRANTED.

Defendant is hereby ORDERED to file a redacted version of their submission on ECF by no later than May 6, 2021. Plaintiff is also ORDERED to file his submissions on ECF under seal, redacting information regarding the location of defense counsel's family, by no later than May 10, 2021. For the sake of clarity, these shall be filed in the same order as previously submitted to the Court.

The Court understands that this case is important to all parties involved and that emotions are running high. That being said, the Court finds the posts referenced in Defendant's letter to be highly concerning and extremely problematic, especially after the Court advised Mr. Kirk that "although he is a *pro se* plaintiff, he is not excused from any obligation not to harass the defendant or defendant's counsel by any means. That includes, but is not limited to, email and/or Facebook." ECF No. 43 ("April 16 Conference Tr.") at 8:3-6. The Court recognizes Mr. Kirk's First Amendment right to free speech, however, the First Amendment does not excuse "threats or actions of leaving stinging online reviews." *See United States v. Spear*, 20-cr-51-1, 2021 WL 794784, at *2-3 (S.D.N.Y. Mar. 2, 2021) ("true threats" not afforded First Amendment

protection even where not specifically directed at an individual); *see also* Fed. R. Civ. P. 11(b) (“By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person’s knowledge . . . it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation . . .”). The Court reiterates that Mr. Kirk is prohibited from harassing Defendant or defense counsel by any means, including but not limited to, via Facebook, email and/or Yelp, and from encouraging others to do so.¹

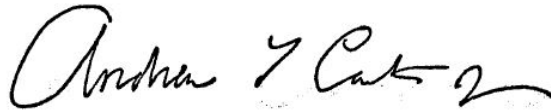
Defendant is hereby GRANTED leave to file a motion for sanctions against Mr. Kirk by no later than May 25, 2021. Plaintiff’s opposition shall be due by no later than June 8, 2021 and Defendant may reply by no later than June 15, 2021. Plaintiff is warned that any additional harassment may result in the Court imposing sanctions *sua sponte*, including dismissing Plaintiff’s case. *See Internet Law Library, Inc. v. Southridge Capital Mgmt., LLC*, No. 01-cv-6600, 2005 WL 3370542, at *1 (S.D.N.Y. Dec. 12, 2005) (“[T]he court has the inherent authority to dismiss a case when a party disobeys any of its orders.”) (internal citation omitted), *aff’d*, 329 F. App’x 299 (2d Cir. Apr. 29, 2009).

¹ While Plaintiff has stated that he will no longer continue to email Defendant’s counsel except to copy them on court communications and Plaintiff is not technically bound by the New York Rules of Professional Conduct, the Court notes that threatening criminal action in order to gain advantage in a civil case is improper. *See, e.g.*, N.Y. Rules of Prof. Conduct 3.4(e). Contacting Defendant directly without copying (or notifying) counsel is also improper. *Id.* 4.2(a) and (c).

Defendant is hereby ORDERED to serve Plaintiff with the instant order and file proof of service by no later than May 6, 2021.

SO ORDERED.

Dated: **May 4, 2021**
 New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", with a stylized flourish at the end.

ANDREW L. CARTER, JR.
United States District Judge